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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/269,118 06/30/94 INOUYE

S. 377,588BP

EXAMINER

HENDRICKS, K

ART UNIT

PAPER NUMBER

5

18M2/0612

GERARD J. WEISER  
WEISER & ASSOCIATES  
230 SOUTH FIFTEENTH STREET  
STE. 500  
PHILADELPHIA, PA 19102

1814

DATE MAILED:

06/12/95

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.  
*for restriction purposes only*  
A shortened statutory period for response to this action is set to expire 30 month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

1. ☒ Claims 1-11 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

- ☐ Claims \_\_\_\_\_ have been cancelled.
- ☐ Claims \_\_\_\_\_ are allowed.
- ☐ Claims \_\_\_\_\_ are rejected.
- ☐ Claims \_\_\_\_\_ are objected to.
- ☒ Claims 1-11 are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

Art Unit 1814

5           This application contains claims directed to the following patentably distinct species of the claimed invention:

10           One of the eleven genus/species of bacterial sources of the RT (listed in claim 10 and disclosed in the specification), which are Myxococcus, Escherichia, Proteus, Klebsiella, Flexabacter, Cytophaga, Stigmatella, Salmonella, Nannocystis, Rhizobium and Bradyrhizobium.

15           Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 9 is generic.

20           Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

25           Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

30           Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

35           

40           Upon the election of a single species indicated above, claims 1-11 will be examined only to the extent that they read upon the elected species. Applicant is requested in their response to indicate which of these claims read upon the elected species, and which, if any, do not.

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Art Unit 1814

A telephone call was made to Gerard Weiser in May, 1995 to request an oral election to the above species requirement, but did not result in an election being made.

5 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

10 Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

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June 7, 1995

*KD Hendricks*  
KEITH D. HENDRICKS  
PATENT EXAMINER  
GROUP 1800